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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,349	08/02/2006	Timothy Thomson	161485-00502	7147

31013 7590 05/15/2009  
KRAMER LEVIN NAFTALIS & FRANKEL LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
1177 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

EXAMINER
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LOUIE, MANDY C

ART UNIT	PAPER NUMBER
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1792

NOTIFICATION DATE	DELIVERY MODE
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05/15/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

klpatent@kramerlevin.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,349	<b>Applicant(s)</b> THOMSON, TIMOTHY	
	<b>Examiner</b> MANDY C. LOUIE	<b>Art Unit</b> 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-7 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. A telephone call was made to Barry Evans on 05/11/09 to request an oral election to the below election/restriction requirement, but did not result in an election being made.

#### ***PCT: Lack of Unity***

#### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-5, drawn to a coating process for forming a film on a substrate, classified in class 427, subclass 244.
  - II. Claims 6-7, drawn to a foam composite, classified in class 428, subclass 316.6.

#### ***Posteriori***

3. Lack of unity of invention may become apparent under “a posteriori,” that is, after taking the prior art into consideration: the independent claims appears to be drawn to A + X and A + Y, and the unity of invention (i.e. species) presents “a posteriori” as A being common to both claims, where the prior art teaches A.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature which is referred to Annex B of Appendix A1 of the MPEP (Administrative

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Instructions under the PCT: "Unity of Invention"). The express "special technical features" is defined as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art" with respect to novelty and inventive step (Rule 13.2). Unity exists only when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding claimed special technical features. In this case, the technical feature shared by each invention is: hydrophobic polyurethane polymer foam coated with hydrophilic polyurethane polymer foam.

The question of unity of invention has been reconsidered retroactively by the examiner in view of the search performed; a review of US 4957810 (Eleouet et al.) in view of US 5098621 (Hermann), makes clear that the inventions of the groups I-II lack the same or corresponding special technical feature due to novelty and inventive step being deficient. In this case, the group lacks special technical feature due to a lack of inventive step because the cited reference(s) appear to demonstrate that the claimed technical feature does not define a contribution which each of the inventions, considered as a whole, makes over the prior art. Eleouet et al. a body of hydrophobic synthetic material coated with a layer of hydrophilic material [abstract] where the hydrophobic synthetic material may be hydrophobic polyurethane foam [Eleouet, col 2, ln 54-55]. Although Eleouet et al. does not specifically use a hydrophilic polyurethane polymer as the hydrophilic material, it would have been obvious to one of ordinary skill in the art to substitute such hydrophilic material such as hydrophilic polyurethane polymer. One would have been motivated to do so to include any active particles such

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as fragrances, antimicrobial, and so forth, to bond intimately with a foam substrate without being lose during fabrication [Hermann, col 3, ln 30-33], while the innate hydrophilic properties of the polymer would facilitate the fabrication of a foam composite that has excellent water retention qualities and physical, mechanical and chemical resistance [Eleouet, col 1, ln 47-55]. Accordingly, the prior art of the record supports restriction of the claimed subject matter in to the groups as mentioned immediately above.

### ***Conclusion***

1. No claim is allowed.
2. All the pending claims are subject to restriction/election requirement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MANDY C. LOUIE whose telephone number is (571)270-5353. The examiner can normally be reached on Monday to Friday, 7:30AM - 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571)272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. C. L./  
Examiner, Art Unit 1792

/Timothy H Meeks/  
Supervisory Patent Examiner, Art Unit 1792